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AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE: 32-2-512-9890

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February 24, 1993

RECEIVED

FEB 24 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Mass Media Docket 92-254


Dear Ms. Searcy:

Submitted herewith, for association with the above-referenced docket, are copies of two letters to Mr. Milton Gross of the FCC's staff. We originally filed the letters on behalf of KXAN-TV in connection with a legally qualified federal candidate's request for time to air a program-length anti-abortion ad, during only some of which the candidate's image or voice appeared.

These materials are being submitted for association with the above-referenced docket after a discussion with Commission personnel. Accordingly, we respectfully submit that there is good cause for accepting them, notwithstanding that the filing deadline for reply comments in the proceeding was yesterday.

Any questions in connection with this matter should be directed to the undersigned.

Respectfully submitted,


Jonathan D. Blake
Attorney for KXAN-TV

No. of Copies rec'd
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October 9, 1992

STAMP & RETURN

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BY HAND

RECEIVED

OCT 9 1992

Mr. Milton O. Gross
Chief, Fairness and Political Programming Branch
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W.
Washington, D.C. 20554
POLITICAL BRANCH

Re: Request for Review of Political Program

Dear Mr. Gross:

On behalf of KXAN-TV, we hereby request that the Commission review the enclosed videotape of a paid political program that Stephen Hopkins, a legally qualified Congressional candidate, has submitted for broadcast. The purpose of the requested review would be to determine if the program constitutes a "use" within the meaning of Section 315 of the Communications Act.

As you and I discussed yesterday afternoon, under Commission precedents, an entire program-length paid political advertisement may not be considered a "use" if the candidate's appearance is limited to a segregable portion of the program, and the material contained in the balance of the program is not integrally related to the candidate's appearance. After viewing the enclosed tape with those precedents in mind, we and KXAN-TV personnel are unsure whether the entire paid political program constitutes a "use" within the meaning of the Act and the Commission's Rules.

As we are sure you appreciate, because certain portions of the program are arguably indecent (they contain visuals that include public hair and, in passing, female and male genitalia) KXAN-TV does not wish to broadcast the program if it is not a "use". Accordingly, we request that you view the program and inform us, at your earliest convenience, whether in the Commission's view (1) the program as a whole is a "use", (2) only certain portions of the program constitute a "use", with the station being liable for violations of the Commission's indecency rules with respect to, and otherwise

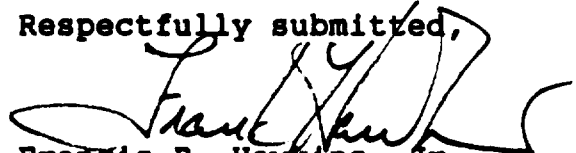
Mr. Milton O. Gross
October 9, 1992
Page 2

responsible for, material contained in the non-"use" portions of the program (and therefore able to edit those portions of the program to comply with the indecency rules and other obligations), or (3) the station will not be liable for violations of the indecency rules or otherwise responsible for the non-"use" portions of the program, regardless of whether the entire program is a "use" within the meaning of the Act and the Rules.

KXAN-TV personnel only received the enclosed tape yesterday afternoon and have sought to determine whether the entire program is a "use" as rapidly as possible. KXAN-TV has informed Mr. Hopkins that the tape is being submitted to the Commission for its review and has committed to Mr. Hopkins that it will seek a Commission decision as quickly as possible. Accordingly, we respectfully request that you review the enclosed tape at your earliest convenience.

Please call the undersigned (202/662-5482) or Jonathan Blake (202/662-5506) if you have any questions.

Respectfully submitted,



Francis R. Hawkins, Jr.
Attorney for KXAN-TV

Enclosure

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BRUSSELS CORRESPONDENT OFFICE

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October 14, 1992

BY HAND

Mr. Milton O. Gross
Chief, Fairness and Political Programming Branch
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 8202
Washington, D.C. 20554

Re: Complaint by Stephen Hopkins against KXAN-TV

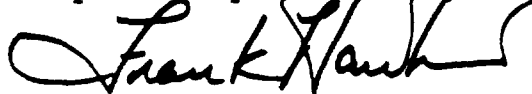
Dear Mr. Gross:

Pursuant to our discussion of earlier this afternoon, enclosed please find a copy of a letter sent by KXAN-TV today to Mr. Stephen Hopkins concerning the broadcast of his program-length political advertisement.

We hope that the approach outlined in the station's letter will moot Mr. Hopkins' complaint against the station. If for some reason an issue remains, KXAN-TV will promptly respond to the Commission.

Please call the undersigned (202/662-5482) or Jonathan Blake (202/662-5506) if you have any questions.

Respectfully submitted



Francis R. Hawkins, Jr.
Attorney for KXAN-TV

Enclosure

cc: Mr. Stephen Hopkins (by fax)

RECEIVED
OCT 15 1992
ENFORCEMENT DIVISION

KXAN-TV 36

BUILDING A BETTER TEXAS

October 14, 1992

VIA EXPRESS MAIL AND FAX

Mr. Stephen Hopkins
P.O. Box 1429
Leander, TX 78641

SUBJECT: Program-Length Political Advertisement

Dear Mr. Hopkins:

This letter responds to your request that KXAN-TV broadcast your 30-minute political program in the 10:35-11:05 p.m. time period.

As you know, KXAN-TV was, and is, concerned that the program you submitted contains indecent and otherwise inappropriate material for which KXAN-TV would be considered legally responsible if the program in its entirety were not a candidate use. We were, and are, uncertain, whether it is a use in its entirety, since your image or voice appears on the screen for only about one-third of the program, and it might be argued that at least some of the other portions of the program are not integrally related to your appearance and, therefore, are not a candidate use. [See Gray Communications Systems, Inc., 19 F.C.C. 2d 532, 534 (1969). Program is a use "where the candidate's personal appearance(s) is substantial in length, integrally involved in the program, and indeed the focus of the program."]

Accordingly, we formally asked the Federal Communications Commission for a ruling on the "candidate use" issue and postponed our decision as to whether to air your program until the FCC ruled on this matter. Yesterday, our FCC counsel was informed by Milton Gross, Chief of the FCC's Political Programming Branch, that the FCC would not rule on our request.

With this as background, the station is willing to air your program in the 10:35-11:05 p.m. time period, even absent an FCC determination on whether the entire program is a use. Because this time slot is during a period when the indecency restrictions imposed by the FCC on station licensees are more limited, we believe our potential liability for airing the program in this slot would be limited. However, if you wish to air the program in a different time period, KXAN-TV requests that you edit the program so that it is clearly a candidate use in its entirety.

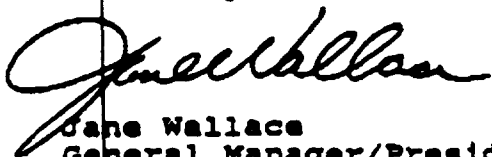
Even if we broadcast the program from 10:35-11:35 p.m., we would use before-and-after "disclaimers" and would also superimpose a crawl throughout the Nathanson film. The disclaimers would be content-neutral and simply advise viewer discretion.

Mr. Stephen Hopkins
October 14, 1992
Page 2

We hope that our proposal will meet with your approval. If it does, we would appreciate your cooperation in making arrangements to broadcast your program in the near future. If you have any questions or concerns about our proposal, please contact us to resolve them.

Finally, Bob Stettner has mentioned to me that you expressed a passing interest in appearing live on the station. As you know, logistics for a live broadcast are more complex than for a taped program. The station must make arrangements for studio time and production crews and, therefore, requires substantial advance notice of a live broadcast. The station is willing to work with you promptly to make arrangements for a live broadcast, either in lieu of, or in addition to, your program-length advertisement. Please contact Bob Stettner if you are interested. (You should be aware that the station will charge you for facilities and personnel, and that these charges are in addition to the basic airtime charges you would incur in connection with a taped program.)

Sincerely,



Jane Wallace
General Manager/President

JW:lrev

cc: Milton O. Gross, Esq.